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6 **BEFORE THE**  
7 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. VN-2008-3160

11 **JOYCE ANN FORMICA**  
12 **12301 Lemon Place**  
13 **Chino, CA 91710**

**DEFAULT DECISION AND ORDER**

**Vocational Nurse License No. VN 109919**

[Gov. Code, §11520]

Respondent.

14 **FINDINGS OF FACT**

15 1. On or about March 10, 2011, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N., in  
16 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
17 Technicians, Department of Consumer Affairs, filed Accusation No. VN-2008-3160 against  
18 Joyce Ann Formica (Respondent) before the Board of Vocational Nursing and Psychiatric  
19 Technicians. (Accusation attached as Exhibit A.)

20 2. On or about August 20, 1982, the Board of Vocational Nursing and Psychiatric  
21 Technicians (Board) issued Vocational Nurse License No. VN 109919 to Respondent. The  
22 Vocational Nurse License expired on April 30, 2010, and has not been renewed.

23 3. On or about March 10, 2011, Respondent was served by Certified and First Class  
24 Mail copies of the Accusation No. VN-2008-3160, Statement to Respondent, Notice of Defense,  
25 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
26 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions  
27 Code section 136 and California Code of Regulations, title 16, section 2504, is required to be  
28 reported and maintained with the Board, which was and is:

1 12301 Lemon Place  
2 Chino, CA 91710

3 4. Service of the Accusation was effective as a matter of law under the provisions of  
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
5 124.

6 5. On or about March 18, 2011, the aforementioned documents were returned by the  
7 U.S. Postal Service marked "Forward Time Expired – Return to Sender." The address on the  
8 documents was the same as the address on file with the Board. A forwarding address was  
9 provided by the U.S. Postal Service.

10 6. On or about March 21, 2011, Respondent was again served by Certified and First  
11 Class Mail copies of the Accusation No. VN-2008-3160, Statement to Respondent, Notice of  
12 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,  
13 11507.6, and 11507.7) to the forwarding address provided by the U.S. Postal Service which was:  
14 125 Melrose Avenue  
15 Ontario, CA 91761

16 7. On or about April 18, 2011, the aforementioned documents were returned by the U.S.  
17 Postal Service marked "Unclaimed."

18 8. Respondent failed to maintain an updated address with the Board and the Board has  
19 made attempts to serve the Respondent at the address on file and to an alternate address provided  
20 by the U.S. Postal Service. Respondent has not made herself available for service and therefore,  
21 has not availed herself of her right to file a notice of defense and appear at hearing.

22 9. Government Code section 11506 states, in pertinent part:

23 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
24 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
25 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

26 10. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
27 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. VN-  
28 2008-3160.

11. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

12. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. VN-2008-3160 finds that the charges and allegations in Accusation No. VN-2008-3160, are separately and severally, found to be true and correct by clear and convincing evidence.

13. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$522.50 as of April 13, 2011.

#### DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Joyce Ann Formica has subjected her Vocational Nurse License No. VN 109919 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Vocational Nursing and Psychiatric Technicians is authorized to revoke Respondent's Vocational Nurse License based upon the following violations alleged in the Accusation which are supported by the Default Decision Evidence Packet in this case:

a. Respondent has subjected her license to disciplinary action under sections 490 and 2878, subdivision (f) of the Code in that on or about August 24, 2009, in a criminal proceeding entitled *People of the State of California v. Joyce Formica*, in San Bernardino County Superior Court, case number MWV903281, Respondent was convicted on her plea of guilty of violating Penal Code sections 484, subdivision (a)/490.5, subdivision (a), petty theft from a merchant, a crime that is substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

1           b.     Respondent has subjected her license to disciplinary action under sections 490  
2 and 2878, subdivision (f) of the Code in that on or about August 16, 2010, in a criminal  
3 proceeding entitled *People of the State of California v. Joyce Ann Formica*, in San Bernardino  
4 County Superior Court, case number MWV1002859, Respondent was convicted on her plea of  
5 guilty of violating Penal Code sections 484, subdivision (a), petty theft, a crime that is  
6 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

7           c.     Respondent has subjected her license to disciplinary action under section 2878,  
8 subdivision (j) of the Code for unprofessional conduct in that on June 3, 2009, and June 9, 2010,  
9 Respondent engaged in acts of dishonesty when she committed the crime of petty theft.

10                               **ORDER**

11           IT IS SO ORDERED that Vocational Nurse License No. VN 109919, heretofore issued to  
12 Respondent Joyce Ann Formica, is revoked.

13           Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
14 written motion requesting that the Decision be vacated and stating the grounds relied on within  
15 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
16 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

17           This Decision shall become effective on July 15, 2011.

18           It is so ORDERED June 15, 2011

19  
20                                 
21                               FOR THE BOARD OF VOCATIONAL NURSING  
22                               AND PSYCHIATRIC TECHNICIANS  
23                               DEPARTMENT OF CONSUMER AFFAIRS

24  
25  
26           DOJ Matter ID: SD2010703479

27           Attachment:  
28           Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
4 Senior Legal Analyst  
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6 San Diego, CA 92186-5266  
Telephone: (619) 645-2141  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

**FILED**

Board of Vocational Nursing  
and Psychiatric Technicians

8  
9 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2008-3160

12 **JOYCE ANN FORMICA**  
13 **12301 Lemon Place**  
14 **Chino, CA 91710**

**A C C U S A T I O N**

15 **Vocational Nurse License No. VN 109919**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in  
20 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
21 Technicians, Department of Consumer Affairs.

22 2. On or about August 20, 1982, the Board of Vocational Nursing and Psychiatric  
23 Technicians issued Vocational Nurse License Number VN 109919 to Joyce Ann Formica  
24 (Respondent). The Vocational Nurse License expired on April 30, 2010, and has not been  
25 renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 2878 of the Code states:

6 The Board may suspend or revoke a license issued under this chapter [the  
7 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the  
following:

8 . . . .

9 (f) Conviction of a crime substantially related to the qualifications, functions,  
10 and duties of a licensed vocational nurse, in which event the record of the conviction  
shall be conclusive evidence of the conviction.

11 . . . .

12 (j) The commission of any act involving dishonesty, when that action is related  
13 to the duties and functions of the licensee.

14 . . . .

### 15 REGULATORY PROVISIONS

16 10. California Code of Regulations, title 16, section 2504.1, states:

17 If the board or its designee asks a licensee to provide criminal history  
18 information, a licensee shall respond to that request within 30 days. The licensee  
shall make available all documents and other records requested and shall respond  
19 with accurate information.

20 11. California Code of Regulations, title 16, section 2521, states:

21 For the purposes of denial, suspension, or revocation of a license pursuant to  
22 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
crime or act shall be considered to be substantially related to the qualifications,  
23 functions or duties of a licensed vocational nurse if to a substantial degree it  
evidences present or potential unfitness of a licensed vocational nurse to perform the  
24 functions authorized by his license in a manner consistent with the public health,  
safety, or welfare. Such crimes or acts shall include but not be limited to those  
25 involving the following:

26 (a) Procuring a license by fraud, misrepresentation, or mistake.

27 (b) A conviction of practicing medicine without a license in violation of  
Chapter 5 of Division 2 of the Business and Professions Code.



1 (c) Violating or attempting to violate, directly or indirectly, or assisting in or  
2 abetting the violation of, or conspiring to violate any provision or term of Chapter  
6.5, Division 2 of the Business and Professions Code.

3 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,  
4 whether a licensed physician or not, in the performance of or arranging for a violation  
5 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and  
6 Professions Code.

7 (e) Conviction of a crime involving fiscal dishonesty.

8 (f) Any crime or act involving the sale, gift, administration, or furnishing of  
9 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the  
10 Business and Professions Code.

11 12. California Code of Regulations, Title 16, section 2522 states:

12 When considering a) the denial of a license under Section 480 of the Business  
13 and Professions Code, b) the suspension or revocation of a license on the ground that  
14 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license  
15 under Section 2787.7 of the Business and Professions Code, the Board in evaluating  
16 the rehabilitation of an individual and his or her present eligibility for a license, will  
17 consider the following criteria:

18 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

19 (2) Actual or potential harm to the public.

20 (3) Actual or potential harm to any patient.

21 (4) Overall disciplinary record.

22 (5) Overall criminal actions taken by any federal, state or local agency or court.

23 (6) Prior warnings on record or prior remediation.

24 (7) Number and/or variety of current violations.

25 (8) Mitigation evidence.

26 (9) In case of a criminal conviction, compliance with terms of sentence and/or  
27 court-ordered probation.

28 (10) Time passed since the act(s) or offense(s) occurred.

(11) If applicable, evidence of proceedings to dismiss a conviction pursuant to  
Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory  
agencies.

(13) Other rehabilitation evidence.

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1 COSTS

2 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 FIRST CAUSE FOR DISCIPLINE

7 (August 24, 2009 Criminal Conviction for Petty Theft on June 3, 2009)

8 14. Respondent has subjected her license to disciplinary action under sections 490 and  
9 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
10 related to the qualifications, functions, and duties of a licensed vocational nurse. The  
11 circumstances are as follows:

12 a. On or about August 24, 2009, in a criminal proceeding entitled *People of*  
13 *the State of California v. Joyce Formica*, in San Bernardino County Superior Court, case number  
14 MWV903281, Respondent was convicted on her plea of guilty of violating Penal Code sections  
15 484, subdivision (a)/490.5, subdivision (a), petty theft from a merchant, a misdemeanor.

16 b. As a result of the conviction, on or about August 24, 2009, Respondent was  
17 sentenced to 24 months probation, and payment of fines and restitution in the amount of \$506.00.

18 c. The facts that led to the conviction were that on or about June 3, 2009,  
19 Respondent entered a Montclair Costco and attempted to steal merchandise. She was arrested by  
20 the Montclair Police Department.

21 SECOND CAUSE FOR DISCIPLINE

22 (August 16, 2010 Criminal Conviction for Petty Theft on June 12, 2010)

23 15. Respondent has subjected her license to disciplinary action under sections 490 and  
24 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
25 related to the qualifications, functions, and duties of a licensed vocational nurse. The  
26 circumstances are as follows:

27 a. On or about August 16, 2010, in a criminal proceeding entitled *People of*  
28 *the State of California v. Joyce Ann Formica*, in San Bernardino County Superior Court, case

1 number MWV1002859, Respondent was convicted on her plea of guilty of violating Penal Code  
2 sections 484, subdivision (a), petty theft, reduced to an infraction by the court.

3 b. As a result of the conviction, on or about August 16, 2010, Respondent was  
4 ordered to pay \$185 in fines and fees.

5 c. The facts that led to the conviction were that on or about the evening of  
6 June 12, 2010, an officer from the Ontario Police Department responded to a supermarket where  
7 Respondent was being detained for shoplifting a three-pack of beer and 1.52 pounds of beef  
8 tongue with a retail value of \$9.99. Upon contacting Respondent, she told the officer that she  
9 stole the items for her boyfriend and that she had stolen items from the store before. Respondent  
10 was arrested for petty theft.

### 11 THIRD CAUSE FOR DISCIPLINE

#### 12 (Commission of Acts Involving Dishonesty)

13 16. Respondent has subjected her license to disciplinary action under section 2878,  
14 subdivision (j) of the Code for unprofessional conduct in that on June 3, 2009, and June 9, 2010,  
15 Respondent committed acts of dishonesty as detailed in paragraphs 14 and 15, above.

### 16 DISCIPLINARY CONSIDERATIONS

17 17. To determine the degree of discipline, if any, to be imposed on Respondent,  
18 Complainant alleges:

19 a. On or about June 11, 2009, August 26, 2009, November 2, 2009, January 25,  
20 2010, June 24, 2010, and September 15, 2010, the Board sent correspondence to Respondent at  
21 her address of record with the Board, as well as an address contained in the Ontario Police  
22 Department arrest report dated June 12, 2010.

23 b. The correspondence directed Respondent to submit to the Board documentation  
24 regarding the arrests and convictions as detailed in paragraphs 14 and 15, above. To date,  
25 Respondent has failed to respond to the Board's communications in violation of California Code  
26 of Regulations, title 16, section 2504.1.

27 ///

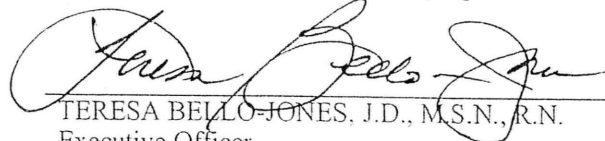
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 109919, issued to Joyce Ann Formica;
2. Ordering Joyce Ann Formica to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: March 10, 2011.



TERESA BEILLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*

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